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AUG 05 2008

In re Application of :  
Jeffry Jovan PHILYAW :  
Application No. 09/659,167 : DECISION ON PETITION  
Filed: September 11, 2000 :  
Attorney Docket No. PHL-25341 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 01, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed June 20, 2005, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on August 19, 2005. See MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Appeal Brief; (2) the petition fee of 770.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice of Appeal filed June 20, 2008, is accepted as having been unintentionally delayed.

This application has been abandoned for an extended period of time. The U.S. Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." See Changes to Patent Practice and Procedure, 62 Fed. Reg., at 53160 and 53178; 1203 Off. Gaz. Pat. Office, at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the U.S. Patent and Trademark Office).

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at (571) 272-4231.

This application is being referred to Technology Center AU 3624 for appropriate action on the concurrently filed Appeal Brief.

A handwritten signature in black ink, appearing to read "Michelle R. Eason", with a stylized flourish at the end.

Michelle R. Eason  
Paralegal Specialist  
Office of Petitions